

**Follow-up on Matters Raised at the Sixth Meeting of
the Bills Committee on Electronic Transactions Bill
held on 22 November 1999**

Introduction

This paper addresses the issues raised by Members at the sixth meeting of the Bills Committee on Electronic Transactions Bill held on 22 November 1999.

Clause 19

2. We have separately provided Members with a paper which sets out the relevant provisions in the Bill that are applicable to a recognised certification authority. All provisions in the code of practice for recognised certification authorities to be issued by the Director of Information Technology Services (DITS) under Clause 39 of the Bill are applicable to recognised certification authorities.

3. We consider the term "capable" used in Clause 19(3)(b) of the Bill sufficiently clear. It should be construed in accordance with the ordinary meaning of the word. In layman's terms, the report to be furnished to DITS will have to assess whether the applicant has the necessary ability (financial, technical, managerial, etc.) to meet the various applicable requirements under the Bill and the code of practice.

Clause 20(3)

4. We shall propose a Committee Stage Amendment to cover "security arrangements" in Clause 20(3).

Postmaster General

5. The Administration currently has no plan on the privatisation of Hongkong Post.

6. If Hongkong Post were to be privatised, it would have to comply with all the relevant provisions in the Electronic Transactions Bill which are applicable to a recognised certification authority. Part VII of the Bill on "Recognition of certification authorities and certificates by Director" would also apply to Hongkong Post.

7. Hongkong Post shall maintain a specific part in its overall Post Office Trading Fund account for its operation as a recognised certification authority.

8. The certified statements in respect of the Post Office Trading Fund to be tabled in the Legislative Council annually should deal with the Trading Fund as a whole but there could be a specific part in the statements on the operation of Hongkong Post as a recognised certification authority. As regards the report of the Director of Audit on the certified statements, it is a matter for the Director of Audit, and not the Administration, to decide.

9. The certification service of Hongkong Post is intended to be self-sufficient. There is no plan to subsidise the cost of issuing the certificates by operational revenue from the postal services.

Interest of Third Party

10. We shall stipulate in the Bill that a recognised certification authority must maintain an on-line and publicly accessible repository for storing and retrieving recognised certificates and other information relevant to the recognised certificates it has issued. A third party can, therefore, verify through the concerned repository as to whether a certificate is a recognised one at the time of transaction.

11. Clauses 33 and 34 refer to "reasonably relies" as it is reasonable that a third party should carry out certain steps before he should rely on the information contained in a certificate, e.g. he should verify the status of the certificate and check its certification practice statement through the repository of the certification authority which issues the certificate, he should check the recognition status of that certification authority through the repository and the certification authority disclosure record maintained by the DITS, etc.

12. We note that the legislation in Singapore, Malaysia and Utah on certification authorities have adopted similar provisions as in our Bill.

Code of Practice

13. The code of practice for recognised certification authorities will be issued by the DITS under Clause 39 of the Bill. It is quite common in existing legislation to provide for the issue of code of practice to deal with technical or industry standards.

14. Under Clause 19(3)(b)(i) of the Bill, the report to be furnished to the DITS to support an application for recognition as a recognised certification authority shall, inter alia, assess whether the applicant is capable of complying with the code of practice. The annual report to be furnished by a recognised certification authority to the DITS under Clause 37 of the Bill shall assess, inter alia, whether the certification authority concerned has complied with the code of practice. Under Clause 24 of the Bill, the Director may take into account the compliance of a certification authority with the code of practice in revoking or suspending the recognition of that certification authority.

15. We will separately submit a paper to Members on the comments received in the public consultation exercise of the code of practice.

Taxation Implications

16. We have conveyed Members' concern about the potential taxation implications of electronic commerce to the Commissioner of Inland Revenue for consideration.

Review

17. We shall report separately on our consideration of Members' request for a review of the Electronic Transactions Ordinance after its enactment.

**Information Technology and Broadcasting Bureau
November 1999**